

REMARKS

Claims 39, 43 and 51 have been amended by this response.

No new subject matter has been added by this amendment.

Claims 39-60 are currently pending in this application.

Examiner Interview

Applicants thank the Examiner for her time spent on a telephonic interview on May 25, 2006. During that interview, applicants' agent and the Examiner discussed language that overcomes the rejections recited in the February 8, 2006 Office Action.

Applicants note in the Interview Summary mailed May 26, 2006 that Examiner recites that a proposed amendment to claim 1 was discussed, applicants respectfully point out the discussion was on a proposed amendment to claim 39.

Consistent with the discussion between applicants' agent and the Examiner, applicants have amended claim 39. As described more fully below, applicants respectfully submit that the pending claims overcome the cited art and in condition for allowance.

Claim Objection

Claim 43 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim 39.

The Examiner indicates that claim 43 fails to further limit the claimed focusing device of the previous (independent) claim 39. Applicants have amended claim 43 to further limit the focusing device to a single axial bore passage.

Applicants submit this amendment fully addresses this objection.

Claims Rejection – 35 USC § 112

Claims 39-60 are rejected, under 35 U.S.C 112, second paragraph, as being indefinite for failing to point out and distinctly claim the subject matter which applicant regards as the invention, for the following reasons:

a. Claim 39 recites that "said focusing device having a specific density substantially equal to the density of the first set of selection microbeads, an axial bore passage" is vague and indefinite.

b. Claim 39 recites the term "substantially" to further limit the term "equal" in the limitation that the instant claimed focusing device having a specific density equal to the density of the first set of selection microbeads, an axial bore passage. The term "substantially" is a relative term, which renders the claim indefinite.

c. Claim 51 recites the limitation "said container" in line 1. There is insufficient antecedent basis for this limitation in the claim 39.

Applicants have amended claim 39 to clarify that the instant claimed focusing device has a specific density "equal" the instant claimed first set of selection microbeads and has a structure of the instant claimed axial bore passage and have deleted the term "substantially".

Applicants have amended claim 51 to recite "said separation container" thereby correcting antecedent basis.

Applicants submit that these rejections are rendered moot in view of the amendments to claims 39 and 51.

Claim Rejections – 35 USC § 103

(A) Claims 39-43, 47-49, 51-53, and 57-59 are rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,776,710 to Levine et al. (“Levine 710”) and U.S. Patent No. 5,393,674 to Levine et al. (“Levine 674”).

(B) Claims 44-46 and 54-56 are rejected under 35 U.S.C. 103(a) as being unpatentable over Levine 710 and Levine 674 as applied to claims 39-43, 47-49, 51-53, and 57-59 above, and further in view of US Patent No. 4,927,749 to Dorn (“Dorn”).

(C) Claims 50 and 60 are rejected under 35 U.S.C. 103(a) as being unpatentable over Levine 710 and Levine 674 as applied to claims 39-43, 47-49, 51-53, and 57-59 above, and further in view of Van Vlasselaer US Patent No. 5,646,004 (“Van Vlasselaer”).

Of the claims rejected, claim 39 is independent with the remaining claims dependent thereon.

Applicants have amended claim 39 to recite that said second set of selection microbeads are absent from said axial bore passage of said focusing device after centrifugation as suggested by the Examiner during the interview of May 25, 2006.

Applicants submit none of the cited references either separately or combined disclose, teach, or suggest the claimed separating method of claim 39, therefore the rejections in connection with claim 39 are rendered moot. In addition, claims 40 to 60 which are dependent from claim 39 are likewise patentable over the cited references.

Accordingly, applicants assert that the cited references fail to render the currently claimed invention obvious under 35 U.S.C. §103. Reconsideration and withdrawal of these rejections is earnestly solicited.

In view of the amendments and remarks herein, applicants submit the claims are patentably distinct over the prior art and allowable in form.

The Commissioner is hereby authorized to charge payment of any additional fees associated with this communication or credit any overpayment to Deposit Account No. 02-1666.

If the Examiner has any questions or comments relating to the present application, he or she is respectfully invited to contact Applicant's agent at the telephone number set forth below.

Respectfully submitted,

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